

FW: Oak Woodlands Protection Resources

Vicki Shelby

Fri 7/8/2016 8:43 AM

To: Sandy Currens <scurrens@co.slo.ca.us>; Annette Ramirez <aramirez@co.slo.ca.us>;

5 attachments (5 MB)

July7_2016LetterSupervisorMecham.pdf; AB2162.pdf; AB 2162Annotated.doc; ProtectingRenewableResourcesfnl.pdf; Ecological_and_Ecosystem_Values_Oaks-1.pdf;

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"Thinking a smile all the time will keep your face youthful" - Frank G. Burgess
"Wrinkles should merely indicate where smiles have been" - Mark Twain

From: oakstaff@californiaoaks.org [mailto:oakstaff@californiaoaks.org]

Sent: Thursday, July 07, 2016 4:48 PM

To: Frank Mecham <fm mecham@co.slo.ca.us>

Cc: James Bergman <jbergman@co.slo.ca.us>; jcobb@californiawildlifefoundation.org; cmaecek@co.slo.ca.us; Vicki Shelby <vshelby@co.slo.ca.us>

Subject: Oak Woodlands Protection Resources

Dear Supervisor Mecham,

Please find attached a cover letter and some materials (additional to what I sent previously) that may be helpful to you as you deliberate the path forward for oak woodlands protections in San Luis Obispo County.

All my best,

Angela Moskow
California Oaks Information Network Manager

Item No. 1
Meeting Date: July 15, 2016 Special Meeting
Presented by: Angela Moskow
Rec'd prior to meeting & posted to web on: July 8, 2016



July 7, 2016

The Honorable Frank Mecham
Board of Supervisors
County of San Luis Obispo
Room D-430
County Government Center
San Luis Obispo, CA 93408

Dear Supervisor Mecham:

Please find attached a copy of Assembly Bill (AB) 2162 as well as a document that presents the text along with annotations of the government code that the bill references. We are sending these resources for your consideration as you deliberate the appropriate response to the clear cut of oak trees at Justin Vineyards, the Adelaide, and other sites to protect the natural and agricultural heritage of the county. We have also attached two recent publications on oak ecosystem services and the economic and ecological values of oak woodlands and oak forested lands.

AB 2162, introduced in February of 2016 by Assembly Member Chu aimed to create a process to prohibit the removal of specified oak trees—with the exception of dead trees and the removal of oak trees to create legally required fire breaks, fuel breaks, and rights-of-way—from an oak woodland unless an oak removal plan and permit have been approved by the Director of Fish and Wildlife. The permitting process ensures that oak tree removal would not diminish more than 10 percent of the oak canopy cover that existed on or before January 1, 2016, and that oak or native riparian hardwood trees of 10 inches or greater at breast height would not be removed within 50 feet of any watercourse, lake, or reservoir.

Most oaks are not considered a commercial species, thus they are not covered by regulations from the timber harvest plan (THP) process. The THP process must be completed by a professional registered forester and take into consideration safeguarding environmental values. AB 2162 would have enacted a process similar to that of a THP to determine whether removal of oaks (above a defined threshold) can occur.

AB 2162 was withdrawn early in the session for further refinement with interested parties. If enacted, AB 2162 would have brought protections to oak woodlands on agricultural lands, which are exempted in Section 21083.4 of the Public Resources Code, which was enacted through Senate Bill 1334 (see below). AB 2162 would have repealed those provisions, relying instead on a uniform statewide process that would have included protections for oak woodlands on agricultural lands. However, many county officials believe the provision of oak woodland conversion permits should be overseen by their governing bodies.

Senate Bill (SB) 1334, passed in 2004 and signed by Governor Schwarzenegger, brought the conversion of oak woodlands, with a few exceptions—projects not subject to CEQA under SB 1334 are those on agricultural lands; affordable housing development for low income households located within an urbanized area, or within a sphere of influence as defined pursuant to Section 56076 of the Government Code; and projects undertaken pursuant to an approved Natural Community Conservation Plan (NCCP) or approved subarea plan within an approved NCCP that

includes oaks as a covered species or that conserves oak habitat through natural community conservation preserve designation and implementation and mitigation—under the purview of the California Environmental Quality Act (CEQA). Mitigation measures specified in SB 1334 include conservation of oak woodlands through the use of easements in perpetuity, planting and maintenance of oak trees for a seven-year period, contributions to the state's Oak Woodlands Conservation Fund, and other mitigation approaches developed by counties. CEQA slows, but often does not halt the destruction of oak woodlands. SB 1334 brings regulatory oversight that confers monetary value on oak woodlands. For example, the Council of Tree and Landscape Appraisers' value for a mature, healthy coast live oak tree in an oak woodland can be as high as \$100,000. Further, CEQA requires the analysis and mitigation of greenhouse gas emissions associated with a proposed oak woodland conversion, thereby valuing the considerable ecosystem services associated with carbon sequestration in the woodlands.^{1,2}

Two types of oaks are commercial species in some situations, and are thus subject to protections afforded by the Forest Practice Act and the Forest Practice Rules.³ Further, governmental protections for water and for species that are listed as threatened, endangered, or of special concern confer protections on associated oak woodlands or oak forested lands in some circumstances. The ecosystem threats that many oak species face could result in state or federal endangered species listing if local or statewide protections are not promulgated to govern oak conversions on agricultural lands.

Thank you very much for the leadership that you have shown in protecting San Luis Obispo County's primary old growth resource.

Sincerely,



Janet Cobb
Executive Officer
California Wildlife Foundation/California Oaks



Angela Moskow
California Oaks Information Network
Manager/California Oaks Coalition

cc: James A. Bergman, Director of Planning, San Luis Obispo County

Encls: Assembly Bill (AB) 2162
AB 2162 with annotations
Fact sheet on oak ecosystem services
Fact sheet on oak ecosystem and economic values

¹ Dagit, R., Carlberg, C., Cuba, C., Scott, T. *Economic Incentives for Oak Woodland Preservation and Conservation*. Presented at the Seventh California Oak Symposium: Managing Oak Woodlands in a Dynamic World, US Forest Service, Pacific Southwest Research Station, held in Visalia, CA November 2014.

² Gaman, T. *An Inventory of Carbon and California Oaks*. California Oak Foundation, 2008.

³ Oregon White Oak (*Quercus garryana*) and California Black Oak (*Quercus kelloggii*) are classified as group B commercial species on lands where group A commercial species grow naturally or have grown naturally in the Coast Forest and Northern Forest districts, and California Black Oak is classified as a group B species on lands where group A commercial species grow naturally or have grown naturally in the Southern Forest District. See the *California Forest Practice Rules* for more information.

ASSEMBLY BILL

No. 2162

Introduced by Assembly Member Chu

February 17, 2016

An act to add Chapter 6.3 (commencing with Section 1625) to Division 2 of the Fish and Game Code, and to repeal Section 21083.4 of the Public Resources Code, relating to forestry, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2162, as introduced, Chu. Oak Woodlands Protection Act.

The Z'berg-Nejedly Forest Practice Act of 1973 prohibits a person from conducting timber operations unless a timber harvesting plan prepared by a registered professional forester has been submitted to the Department of Forestry and Fire Protection. The Oak Woodlands Conservation Act provides funding for the conservation and protection of California's oak woodlands. Any violation of the Fish and Game Code is a crime.

This bill would enact the Oak Woodlands Protection Act, which would prohibit a person from removing from an oak woodland, as defined, specified oak trees, unless an oak removal plan and oak removal permit application for the oak tree removal has been submitted to and approved by the Director of Fish and Wildlife.

By June, 30, 2016, the bill would require the Fish and Game Commission to adopt regulations to implement the act, including regulations establishing an oak removal permit application fee. The bill would require the fee to be deposited into the Oak Woodlands Protection Act Fund, as created by the bill. Moneys in the fund would be continuously appropriated to the department for purposes of paying the

total costs incurred by the department in administering and enforcing the act, thereby making an appropriation.

The bill would provide that any person who violates the act is subject to a civil penalty of not more than \$25,000 for each violation. The bill would require all civil penalties collected to be apportioned in a specified manner, including 50% to be distributed to the Wildlife Conservation Board for deposit into the Oak Woodlands Conservation Fund.

Existing law requires a county to determine whether a project may result in a conversion of oak woodlands that will have a significant effect on the environment, and if it does, existing law requires the county to require one or more specified oak woodlands mitigation alternatives to mitigate the significant effect.

This bill would delete this law.

To the extent this bill would provide for additional criminal prosecutions for violations of the Fish and Game Code, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 6.3 (commencing with Section 1625) is
2 added to Division 2 of the Fish and Game Code, to read:

3
4 CHAPTER 6.3. OAK WOODLANDS PROTECTION ACT

5
6 1625. This chapter shall be known, and may be cited, as the
7 Oak Woodlands Protection Act.

8 1626. The Legislature hereby finds and declares all of the
9 following:

10 (a) The conservation of oak woodlands enhances the natural
11 scenic beauty for residents and visitors, increases real property
12 values, promotes ecological balance, provides sustainable habitat
13 for over 300 wildlife species and 2,000 plant species, reduces soil
14 erosion, sustains healthy watersheds and water quality, moderates

1 temperature extremes and climate change, and aids with nutrient
2 cycling, all of which affect and improve the health, safety, and
3 general welfare of the residents of the State of California.

4 (b) Widespread changes in land use patterns across the landscape
5 and habitat loss due to the pathogen *Phytophthora ramorum*,
6 commonly known as Sudden Oak Death, and infestations of the
7 Goldspotted Oak Borer parasite, are fragmenting oak woodlands'
8 wildland character over extensive areas of the state. The
9 combination of human impact and other impacts will cumulatively
10 fragment oak ecosystem continuity unless appropriate conservation
11 steps are taken immediately.

12 (c) The future viability of hundreds of California's wildlife
13 species are dependent on the maintenance of biologically functional
14 and contiguous oak woodland ecosystems at local and bioregional
15 scales.

16 (d) A program to encourage and make possible the long-term
17 conservation of oak woodlands is a necessary part of the state's
18 wildlands protection policies. It is hereby declared to be the policy
19 of the state to conserve oak woodlands and maintain oak ecosystem
20 health.

21 1627. It is the intent of the Legislature that this chapter be
22 construed in light of the following primary objectives:

23 (a) To conserve oak woodland ecological attributes remaining
24 in California and to provide habitat for wildlife species that are
25 associated with that habitat.

26 (b) To provide maximum conservation of the oak woodlands
27 ecosystem.

28 (c) To ensure that land use decisions affecting oak woodlands
29 and dependent wildlife are based on the best available scientific
30 information and habitat mitigation measures.

31 (d) To restore and perpetuate the state's most biologically
32 diverse natural resource for future generations of Californians.

33 1628. For purposes of this chapter, the following terms have
34 the following meanings:

35 (a) "Canopy cover" means the area, measured as a percentage
36 of total ground area, directly under the live branches of an oak
37 tree.

38 (b) "Oak removal" means causing an oak tree to die or be
39 removed as a result of human activity by any means including, but

1 not limited to, cutting, dislodging, poisoning, burning, pruning,
2 topping, or damaging of roots.

3 (c) “Oak removal permit” means a discretionary permit
4 approving an application to remove, from an oak woodland during
5 any calendar year, oak trees, as specified in Section 1629.

6 (d) “Oak removal plan” means an oak woodlands biological
7 impacts evaluation and site-specific management plan.

8 (e) “Oak tree” means any tree in the genus *Quercus* that is not
9 growing on timberland.

10 (f) “Oak woodland” means a land with a greater than ten percent
11 oak canopy cover, or that can be demonstrated to have historically
12 supported greater than ten percent oak canopy cover, and that
13 meets either of the following:

14 (1) A nontimberland area on a parcel of five or more acres
15 containing oak trees.

16 (2) A nontimberland area on a parcel of at least one or more
17 acres containing valley oak trees.

18 (g) “Parcel” means a single assessor’s parcel of land as shown
19 on maps produced by the county assessor.

20 (h) “Riparian hardwood” means native broadleaved evergreen
21 and deciduous trees that produce flowers and grow within 50 feet,
22 measured horizontally, of any watercourse, lake, or reservoir.

23 (i) “Timberland” has the same meaning as defined in Section
24 4526 of the Public Resources Code.

25 (j) “Watercourse” means any well-defined channel with
26 distinguishable bed and bank showing evidence of having contained
27 flowing water indicated by deposit of rock, sand, gravel, or soil,
28 including, but not limited to, a “stream” as defined in Section 4528
29 of the Public Resources Code.

30 1629. (a) (1) Unless an oak removal plan and oak removal
31 permit application for oak removal has been submitted to and
32 approved by the director, a person shall not remove from an oak
33 woodland during a calendar year either of the following:

34 (A) A valley oak tree greater or equal to 10 inches in diameter
35 at breast height.

36 (B) For oak trees other than valley oak trees, 10 or more oak
37 trees greater than or equal to 10 inches in diameter at breast height.

38 (2) The director’s authority to approve an oak removal plan and
39 oak removal permit application pursuant to this subdivision may
40 be delegated by the director to regional managers in the department.

1 (b) An oak removal plan and oak removal permit application
2 shall be prepared and signed by a registered professional forester.

3 (c) Applications for oak removal permits shall be on a form
4 prescribed by the director.

5 (d) By June 30, 2016, the commission shall adopt regulations
6 to implement this chapter, including regulations establishing an
7 application fee for the cost of processing an application for an oak
8 removal permit. The fee charged shall be established in an amount
9 necessary to pay the total costs incurred by the department in
10 administering and enforcing this chapter. The regulations shall
11 ensure that the canopy cover and mapping information contained
12 in all oak removal plans submitted as part of an oak removal permit
13 application is incorporated into a vegetation classification and
14 mapping program maintained by the department.

15 (e) The fee established pursuant to this section shall be deposited
16 into the Oak Woodlands Protection Act Fund, which is hereby
17 created in the State Treasury. Notwithstanding Section 13340 of
18 the Government Code, moneys in the fund are continuously
19 appropriated to the department for the purposes described in
20 subdivision (d).

21 1630. An oak removal plan, in a form prescribed by the
22 commission, shall become part of the application for an oak
23 removal permit. The oak removal plan shall set forth, but not be
24 limited to, the following information:

25 (a) Present and future parcel use.

26 (b) Existing and proposed parcel canopy cover percentages.

27 (c) A parcel map indicating the location of all proposed oak
28 removal.

29 (d) Diameter at breast height and type of oak species to be
30 removed.

31 (e) Number of acres on which oak removal will occur.

32 (f) Habitat mitigation measures.

33 (g) Information required pursuant to Section 21160 of the Public
34 Resources Code.

35 1631. (a) The director's decision to approve an oak removal
36 permit pursuant to this chapter is a discretionary project approval
37 subject to the California Environmental Quality Act (Division 13
38 commencing with Section 21000) of the Public Resources Code).

1 (b) The director or commission may apply to the Secretary of
2 the Natural Resources Agency to certify this program pursuant to
3 Section 21080.5 of the Public Resources Code.

4 1632. (a) The director shall not approve an oak removal permit
5 if any of the following exist:

6 (1) The application and oak removal plan do not comply with
7 this chapter or the regulations adopted by the commission to
8 implement this chapter.

9 (2) The director cannot make the findings specified in Section
10 21081 of the Public Resources Code.

11 (3) Oak tree removal contemplated in the permit would remove
12 more than 10 percent of the oak canopy cover that existed on
13 January 1, 2015.

14 (4) Oak or riparian hardwood trees would be removed within
15 50 feet of any watercourse, lake, or reservoir.

16 (5) There is evidence that the information contained in the
17 application or oak removal plan is, in a material way, either
18 incorrect, incomplete, or misleading, or is insufficient to evaluate
19 the plan's environmental effects.

20 (6) The applicant does not have a legal or equitable interest in
21 the property subject to the application.

22 (7) Implementation of the oak removal plan as proposed would
23 cause a violation of any applicable law.

24 (b) Paragraphs (3) and (4) of subdivision (a) do not apply to the
25 removal of dead trees or the removal of oak trees to create legally
26 required fire breaks, fuel breaks, and rights-of-way.

27 1633. (a) The applicant may appeal the director's denial of an
28 oak removal permit to the commission by filing a notice of appeal
29 with the department within 15 days after notice of the denial. The
30 commission shall hear the appeal within 60 days after the appeal
31 is filed unless a later hearing date is mutually agreed upon by the
32 applicant and the commission.

33 (b) An applicant whose application for an oak removal permit
34 has been denied is entitled to a hearing before the commission
35 conducted pursuant to Chapter 5 (commencing with Section 11500)
36 of Part 1 of Division 3 of Title 2 of the Government Code. The
37 commission shall hear and decide appeals de novo.

38 1634. (a) A person may maintain an action for declaratory and
39 equitable relief to restrain any violation of this chapter. On a prima

1 facie showing of a violation of this chapter, preliminary equitable
2 relief shall be issued to restrain any further violation of this chapter.

3 (b) Oak removal permits approved pursuant to this chapter are
4 construction projects as that term is used in Section 529.1 of the
5 Code of Civil Procedure. In any civil action brought pursuant to
6 this chapter in which a temporary restraining order, preliminary
7 injunction, or permanent injunction is sought, it is not necessary
8 to allege or prove at any stage of the proceeding either of the
9 following:

10 (1) That irreparable damage will occur if the temporary
11 restraining order, preliminary injunction, or permanent injunction
12 is not issued.

13 (2) The remedy at law is inadequate.

14 1635. The permittee shall cause an approved oak removal
15 permit to be recorded in each county in which the property is
16 located before beginning any operations contemplated under the
17 permit.

18 1636. (a) A person who violates this chapter is subject to a
19 civil penalty of not more than twenty-five thousand dollars
20 (\$25,000) for each violation.

21 (b) The civil penalty imposed for each violation pursuant to this
22 section is separate from, and in addition to, any other civil penalty
23 imposed for a violation pursuant to this section or any other
24 provision of law.

25 (c) In determining the amount of any civil penalty imposed
26 pursuant to this section, the court shall take into consideration the
27 nature, circumstance, extent, and gravity of the violation. In making
28 this determination, the court may consider whether the effects of
29 the violation may be reversed or mitigated, and with respect to the
30 defendant, the ability to pay, any voluntary mitigation efforts
31 undertaken, any prior history of violations, the gravity of the
32 behavior, the economic benefit, if any, resulting from the violation,
33 and any other matters the court determines justice may require.

34 (d) Every civil action brought under this section shall be brought
35 by the Attorney General upon complaint by the department, or by
36 the district attorney or city attorney in the name of the people of
37 the State of California and any actions relating to the same violation
38 may be joined or consolidated.

1 (e) All civil penalties collected pursuant to this section shall not
2 be considered fines or forfeitures as described in Section 13003
3 and shall be apportioned in the following manner:

4 (1) Fifty percent shall be distributed to the county treasurer of
5 the county in which the action is prosecuted. Amounts paid to the
6 county treasurer shall be deposited in the county fish and wildlife
7 propagation fund established pursuant to Section 13100.

8 (2) Fifty percent shall be distributed to the Wildlife Conservation
9 Board for deposit in the Oak Woodlands Conservation Fund created
10 by Section 1363. These funds may be expended to cover the costs
11 of any legal actions or for any other law enforcement purpose
12 consistent with Section 9 of Article XVI of the California
13 Constitution.

14 SEC. 2. Section 21083.4 of the Public Resources Code is
15 repealed.

16 ~~21083.4. (a) For purposes of this section, "oak" means a native~~
17 ~~tree species in the genus Quercus, not designated as Group A or~~
18 ~~Group B commercial species pursuant to regulations adopted by~~
19 ~~the State Board of Forestry and Fire Protection pursuant to Section~~
20 ~~4526, and that is 5 inches or more in diameter at breast height.~~

21 ~~(b) As part of the determination made pursuant to Section~~
22 ~~21080.1, a county shall determine whether a project within its~~
23 ~~jurisdiction may result in a conversion of oak woodlands that will~~
24 ~~have a significant effect on the environment. If a county determines~~
25 ~~that there may be a significant effect to oak woodlands, the county~~
26 ~~shall require one or more of the following oak woodlands~~
27 ~~mitigation alternatives to mitigate the significant effect of the~~
28 ~~conversion of oak woodlands:~~

29 ~~(1) Conserve oak woodlands, through the use of conservation~~
30 ~~easements.~~

31 ~~(2) (A) Plant an appropriate number of trees, including~~
32 ~~maintaining plantings and replacing dead or diseased trees.~~

33 ~~(B) The requirement to maintain trees pursuant to this paragraph~~
34 ~~terminates seven years after the trees are planted.~~

35 ~~(C) Mitigation pursuant to this paragraph shall not fulfill more~~
36 ~~than one-half of the mitigation requirement for the project.~~

37 ~~(D) The requirements imposed pursuant to this paragraph also~~
38 ~~may be used to restore former oak woodlands.~~

39 ~~(3) Contribute funds to the Oak Woodlands Conservation Fund,~~
40 ~~as established under subdivision (a) of Section 1363 of the Fish~~

1 and Game Code, for the purpose of purchasing oak woodlands
2 conservation easements, as specified under paragraph (1) of
3 subdivision (d) of that section and the guidelines and criteria of
4 the Wildlife Conservation Board. A project applicant that
5 contributes funds under this paragraph shall not receive a grant
6 from the Oak Woodlands Conservation Fund as part of the
7 mitigation for the project.

8 (4) Other mitigation measures developed by the county.

9 (c) Notwithstanding subdivision (d) of Section 1363 of the Fish
10 and Game Code, a county may use a grant awarded pursuant to
11 the Oak Woodlands Conservation Act (Article 3.5 (commencing
12 with Section 1360) of Chapter 4 of Division 2 of the Fish and
13 Game Code) to prepare an oak conservation element for a general
14 plan, an oak protection ordinance, or an oak woodlands
15 management plan, or amendments thereto, that meets the
16 requirements of this section.

17 (d) The following are exempt from this section:

18 (1) Projects undertaken pursuant to an approved Natural
19 Community Conservation Plan or approved subarea plan within
20 an approved Natural Community Conservation Plan that includes
21 oaks as a covered species or that conserves oak habitat through
22 natural community conservation preserve designation and
23 implementation and mitigation measures that are consistent with
24 this section.

25 (2) Affordable housing projects for lower income households,
26 as defined pursuant to Section 50079.5 of the Health and Safety
27 Code, that are located within an urbanized area, or within a sphere
28 of influence as defined pursuant to Section 56076 of the
29 Government Code.

30 (3) Conversion of oak woodlands on agricultural land that
31 includes land that is used to produce or process plant and animal
32 products for commercial purposes.

33 (4) Projects undertaken pursuant to Section 21080.5 of the Public
34 Resources Code.

35 (e) (1) A lead agency that adopts, and a project that
36 incorporates, one or more of the measures specified in this section
37 to mitigate the significant effects to oaks and oak woodlands shall
38 be deemed to be in compliance with this division only as it applies
39 to effects on oaks and oak woodlands.

line 1 (2) The Legislature does not intend this section to modify
line 2 requirements of this division, other than with regard to effects on
line 3 oaks and oak woodlands.

line 4 (f) This section does not preclude the application of Section
line 5 21081 to a project.

line 6 (g) This section, and the regulations adopted pursuant to this
line 7 section, shall not be construed as a limitation on the power of a
line 8 public agency to comply with this division or any other provision
line 9 of law.

line 10 SEC. 3. No reimbursement is required by this act pursuant to
line 11 Section 6 of Article XIII B of the California Constitution because
line 12 the only costs that may be incurred by a local agency or school
line 13 district will be incurred because this act creates a new crime or
line 14 infraction, eliminates a crime or infraction, or changes the penalty
line 15 for a crime or infraction, within the meaning of Section 17556 of
line 16 the Government Code, or changes the definition of a crime within
line 17 the meaning of Section 6 of Article XIII B of the California
line 18 Constitution.

O

ANNOTATED TEXT FROM ASSEMBLY BILL 2163
THE OAK WOODLANDS PROTECTION ACT

AB 2162 was an act to add Chapter 6.3 (commencing with Section 1625) to Division 2 of the Fish and Game Code. **Sections 1 and 3 are presented below along with annotations (in italics) of California code that are referenced in the bill.**

The primary objectives of AB 2162 were presented in section 1627 of the act:

- (a) To conserve oak woodland ecological attributes remaining in California and to provide habitat for wildlife species that are associated with such habitat.
- (b) To provide maximum conservation of the oak woodlands ecosystem.
- (c) To ensure that land use decisions affecting oak woodlands and dependent wildlife are based on the best available scientific information and habitat mitigation measures.
- (d) To restore and perpetuate the state's most biologically diverse natural resource for future generations of Californians.

DEFINITIONS: Section 1628 of the legislation provides the following definitions:

- (a) **"Canopy cover"** means the area, defined as a percent of total ground area, directly under the live branches of an oak tree.
- (b) **"Oak removal"** means causing an oak tree to die or be removed as a result of human activity by any means including, but not limited to, cutting, dislodging, poisoning, burning, pruning, topping or damaging of roots.
- (c) **"Oak removal permit"** means a discretionary permit approving an application to remove from an oak woodland during any calendar year, oak trees, as specified in Section 1629.
- (d) **"Oak removal plan"** means an oak woodlands biological impacts evaluation and site-specific management plan.
- (e) **"Oak tree"** means any tree in the genus *Quercus* that is not growing on timberland.
- (f) **"Oak woodland"** means a land with greater than ten percent oak canopy cover, or that can be demonstrated to have historically supported greater than ten (10) percent oak canopy cover, and that meets either of the following:
 - (1) A non-timberland area on a parcel of five or more acres containing oak trees.
 - (2) A non-timberland area on a parcel of at least one or more acres containing valley oak trees
- (g) **"Parcel"** means a single assessor's parcel of land as shown on maps produced by the county assessor.
- (h) **"Riparian hardwood"** means native broadleaved evergreen and deciduous trees that produce flowers [new language proposed as an amendment appears in italics:] *and are greater to or equal to 10" in diameter at breast height* and grow within 50 feet, measured horizontally, of any watercourse or lake.

(i) "**Timberland**" has the same meaning as defined in Section 4526 of the Public Resources Code

- 4526. *"Timberland" means land, other than land owned by the federal government and land designated by the board as experimental forest land, which is available for, and capable of, growing a crop of trees of a commercial species used to produce lumber and other forest products, including Christmas trees. Commercial species shall be determined by the board on a district basis.*

(j) "**Watercourse**" means any well-defined channel with distinguishable bed and bank showing evidence of having contained flowing water indicated by deposit of rock, sand, gravel, or soil, including but not limited to a "stream" as defined in Section 4528 of the Public Resources Code.

- (f) *"Stream" means a natural watercourse as designated by a solid line or dash and three dots symbol shown on the largest scale United States Geological Survey map most recently published.*

REGULATORY APPROACH: 1629. (a) (1) Unless an **oak removal plan** and **oak removal permit application** for oak removal has been submitted to and approved by the director, a person shall not remove from an oak woodland during a calendar year either of the following:

(A) A valley oak tree greater or equal to 10" in diameter at breast height.

(B) For oak trees other than valley oak trees, 10 or more oak trees greater than or equal to 10" in diameter at breast height.

(2) The director authority to approve an oak removal plan and oak removal permit pursuant to this subdivision may be delegated by the director to the regional managers in the department.

(b) An oak removal plan and oak removal permit application shall be prepared and signed by a registered professional forester.

(c) Applications for oak removal permits shall be on a form prescribed by the director.

(d) By June 30, 2017, the Commission shall adopt regulations to implement this chapter, including regulations establishing an application fee for the cost of processing an application for an oak removal permit. The fee charged is to be established in an amount necessary to pay the total costs incurred by the department in administering and enforcing this chapter. The regulations shall ensure that the vegetation cover and mapping information contained in all oak removal plans submitted as part of an oak removal permit application is incorporated into a vegetation classification and mapping program maintained by the Department.

(e) The fee established pursuant to this section shall be deposited into the Oak Woodlands Protection Act Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the fund are continuously appropriated to the department for the purposes described in subdivision (d).

1630. An **oak removal plan**, in a form prescribed by the commission, shall become part of the application for an oak removal permit. The oak removal plan shall be prepared by a Registered Professional Forester and will set forth, but not be limited to, the following information:

- (a) Present and future parcel use.
 - (b) Existing and proposed parcel canopy cover percentages.
 - (c) A parcel map indicating the location of all proposed oak removal.
 - (d) Diameter at breast height and type of oak species to be removed.
 - (e) Number of acres on which oak removal will occur.
 - (f) Habitat mitigation measures.
 - (g) Information required pursuant to Section 21160 of Public Resources Codes.
- *21160. Whenever any person applies to any public agency for a lease, permit, license, certificate, or other entitlement for use, the public agency may require that person to submit data and information which may be necessary to enable the public agency to determine whether the proposed project may have a significant effect on the environment or to prepare an environmental impact report. If any or all of the information so submitted is a "trade secret" as defined in Section 6254.7 of the Government Code by those submitting that information, it shall not be included in the impact report or otherwise disclosed by any public agency. This section shall not be construed to prohibit the exchange of properly designated trade secrets between public agencies who have lawful jurisdiction over the preparation of the impact report.*

1631. (a) The director's decision to approve an oak removal permit pursuant to this chapter is a discretionary project approval subject to the California Environmental Quality Act, (Division 13, commencing with Section 21000 of the Public Resources Code).

- *21000. The Legislature finds and declares as follows: (a) The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern. (b) It is necessary to provide a high-quality environment that at all times is healthful and pleasing to the senses and intellect of man. (c) There is a need to understand the relationship between the maintenance of high-quality ecological systems and the general welfare of the people of the state, including their enjoyment of the natural resources of the state. (d) The capacity of the environment is limited, and it is the intent of the Legislature that the government of the state take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached. (e) Every citizen has a responsibility to contribute to the preservation and enhancement of the environment. (f) The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by public and private interests to enhance environmental quality*

and to control environmental pollution. (g) It is the intent of the Legislature that all agencies of the state government which regulate activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall regulate such activities so that major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.

(b) The director or commission may apply to the Secretary of the Resources Agency to certify this program pursuant to Section 21080.5 of the Public Resources Code.

- 21080.5. (a) *Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of an activity listed in subdivision (b), the plan or other written documentation may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section. (b) This section applies only to regulatory programs or portions thereof that involve either of the following: (1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use. (2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program. (c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5. (d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and that shall meet all of the following criteria: (1) The enabling legislation of the regulatory program does both of the following: (A) Includes protection of the environment among its principal purposes. (B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation. (2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following: (A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen a significant adverse effect that the activity may have on the environment. (B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program. (C) Require the administering agency to consult with all public agencies that have jurisdiction, by law, with respect to the proposed activity. (D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process. (E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency.*

Those notices shall be available for public inspection, and a list of the notices shall be posted on a weekly basis in the Office of the Resources Agency. Each list shall remain posted for a period of 30 days. (F) Require notice of the filing of the plan or other written documentation to be made to the public and to a person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or a person requesting notification with sufficient time to review and comment on the filing. (3) The plan or other written documentation required by the regulatory program does both of the following: (A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity. (B) Is available for a reasonable time for review and comment by other public agencies and the general public. (e) (1) The Secretary of the Resources Agency shall certify a regulatory program that the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. (2) In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the secretary shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry may not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity. (3) If the secretary determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination. (f) After a regulatory program has been certified pursuant to this section, a proposed change in the program that could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review may not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity. The secretary shall have 30 days from the date of receipt of the proposed change to notify the state agency whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section. (g) An action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program that has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later

than 30 days from the date of the filing of notice of the approval or adoption of the activity. (h) (1) An action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary. (2) In an action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence. (i) For purposes of this section, a county agricultural commissioner is a state agency. (j) For purposes of this section, an air quality management district or air pollution control district is a state agency, except that the approval, if any, by a district of a nonattainment area plan is subject to this section only if, and to the extent that, the approval adopts or amends rules or regulations. (k) (1) The secretary, by July 1, 2004, shall develop a protocol for reviewing the prospective application of certified regulatory programs to evaluate the consistency of those programs with the requirements of this division. Following the completion of the development of the protocol, the secretary shall provide a report to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources regarding the need for a grant of additional statutory authority authorizing the secretary to undertake a review of the certified regulatory programs. (2) The secretary may update the protocol, and may update the report provided to the legislative committees pursuant to paragraph (1) and provide, in compliance with Section 9795 of the Government Code, the updated report to those committees if additional statutory authority is needed. (3) The secretary shall provide a significant opportunity for public participation in developing or updating the protocol described in paragraph (1) or (2), including, but not limited to, at least two public meetings with interested parties. A notice of each meeting shall be provided at least 10 days prior to the meeting to a person who files a written request for a notice with the agency and to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources.

1632. (a) The Director shall not approve an oak removal permit if any of the following exist:

(1) The application and oak removal plan do not comply with this chapter or the regulations adopted by the commission to implement this chapter,

(2) The director cannot make the findings specified in Public Resources Code section 21081.

- 21081. Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur: (a) The public agency makes one or more of the following findings with respect to each significant effect: (1) Changes or alterations have been required in, or incorporated into, the project which mitigate

or avoid the significant effects on the environment. (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency. (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report. (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

21081.2. (a) Except as provided in subdivision (c), if a residential project, not exceeding 100 units, with a minimum residential density of 20 units per acre and within one-half mile of a transit stop, on an infill site in an urbanized area is in compliance with the traffic, circulation, and transportation policies of the general plan, applicable community plan, applicable specific plan, and applicable ordinances of the city or county with jurisdiction over the area where the project is located, and the city or county requires that the mitigation measures approved in a previously certified project area environmental impact report applicable to the project be incorporated into the project, the city or county is not required to comply with subdivision (a) of Section 21081 with respect to the making of any findings regarding the impacts of the project on traffic at intersections, or on streets, highways, or freeways. (b) Nothing in subdivision (a) restricts the authority of a city or county to adopt feasible mitigation measures with respect to the impacts of a project on pedestrian and bicycle safety. (c) Subdivision (a) does not apply in any of the following circumstances: (1) The application for a proposed project is made more than five years after certification of the project area environmental impact report applicable to the project. (2) A major change has occurred within the project area after certification of the project area environmental impact report applicable to the project. (3) The project area environmental impact report applicable to the project was certified with overriding considerations pursuant to subdivision (b) of Section 21081 to the significant impacts on the environment with respect to traffic or transportation. (4) The proposed project covers more than four acres. (d) A project shall not be divided into smaller projects in order to qualify pursuant to this section. (e) Nothing in this section relieves a city or county from the requirement to analyze the project's effects on traffic at intersections, or on streets, highways, or freeways, or from making a determination that the project may have a significant effect on traffic. (f) For the purposes of this section, "project area environmental impact report" means an environmental impact report certified on any of the following: (1) A general plan. (2) A revision or update to the general plan that includes at least the land use and circulation elements. (3) An applicable community plan. (4) An applicable specific plan. (5) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project. (6) A zoning ordinance.

21081.5. In making the findings required by paragraph (3) of subdivision (a) of Section 21081, the public agency shall base its findings on

substantial evidence in the record. 21081.6. (a) When making the findings required by paragraph (1) of subdivision (a) of Section 21081 or when adopting a mitigated negative declaration pursuant to paragraph (2) of subdivision (c) of Section 21080, the following requirements shall apply: (1) The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program. (2) The lead agency shall specify the location and custodian of the documents or other material which constitute the record of proceedings upon which its decision is based. (b) A public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures. Conditions of project approval may be set forth in referenced documents which address required mitigation measures or, in the case of the adoption of a plan, policy, regulation, or other public project, by incorporating the mitigation measures into the plan, policy, regulation, or project design. (c) Prior to the close of the public review period for a draft environmental impact report or mitigated negative declaration, a responsible agency, or a public agency having jurisdiction over natural resources affected by the project, shall either submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the responsible agency or agency having jurisdiction over natural resources affected by the project, or refer the lead agency to appropriate, readily available guidelines or reference documents. Any mitigation measures submitted to a lead agency by a responsible agency or an agency having jurisdiction over natural resources affected by the project shall be limited to measures which mitigate impacts to resources which are subject to the statutory authority of, and definitions applicable to, that agency. Compliance or noncompliance by a responsible agency or agency having jurisdiction over natural resources affected by a project with that requirement shall not limit the authority of the responsible agency or agency having jurisdiction over natural resources affected by a project, or the authority of the lead agency, to approve, condition, or deny projects as provided by this division or any other provision of law. 21081.7. Transportation information resulting from the reporting or monitoring program required to be adopted by a public agency pursuant to Section 21081.6 shall be submitted to the transportation planning agency in the region where the project is located and to the Department of Transportation for a project of statewide, regional, or areawide significance according to criteria developed pursuant to Section 21083. The transportation planning agency and the Department of Transportation shall adopt guidelines for the submittal of those reporting or monitoring programs.

(3) Oak tree removal operations would remove more than 10 percent of the oak canopy cover that existed on January 1, 2016;

(4) Oak or riparian hardwood trees would be removed within 50 feet of any watercourse, lake, or reservoir.

(5) There is evidence that the information contained in the application or oak removal plan is incorrect, incomplete or misleading in a material way, or is insufficient to evaluate the plan's environmental effects.

(6) The applicant does not have a legal or equitable interest in the property subject to the application.

(7) Implementation of the oak removal plan as proposed would cause a violation of any applicable law.

(8) Paragraphs (3) and (4) of subdivision (a) do not apply to the removal of dead trees or the removal of oak trees to create legally required fire breaks, fuel breaks and rights-of-way.

1633. (a) The applicant may appeal the director's denial of an oak removal permit to the commission by filing a notice of appeal with the Department within 15 days after notice of the denial. The commission shall hear the appeal within sixty (60) days after the appeal is filed unless a later hearing date is mutually agreed upon by the applicant and the commission.

(b) Any applicant whose application for an oak removal permit has been denied is entitled to a hearing before the commission pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The commission shall hear and decide appeals de novo.

- *(b) Notwithstanding Section 11502 of the Government Code, whenever the department conducts a hearing under Chapter 4.5 (commencing with Section 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the hearing shall be conducted before an administrative law judge selected by the department and assigned to a hearing office that complies with the procedural requirements of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code. - See more at: <http://codes.findlaw.com/ca/health-and-safety-code/hsc-sect-100171.html#sthash.IZjkuBjB.dpuf>*

1634. (a) Any person may maintain an action for declaratory and equitable relief to restrain any violation of this chapter. On a prima facie showing of a violation of this chapter, preliminary equitable relief shall be issued to restrain any further violation of this chapter.

(b) Oak removal permits approved pursuant to this chapter are construction projects as that term is used in Section 529.1 of the Code of Civil Procedure.

- *(a) In all actions in which the court has granted an injunction sought by any plaintiff to enjoin a construction project which has received all legally required licenses and permits, the defendant may apply to the court by noticed motion for an order requiring the plaintiff to furnish an undertaking as security for costs and any damages that may be incurred by the defendant by the conclusion of the action or proceeding as the result of a delay in the construction of the project. The motion shall be made on the grounds that there is no reasonable possibility that the plaintiff will obtain a judgment against the moving defendant and that the plaintiff will not suffer undue economic hardship by filing the undertaking.*
- *(b) If the court, after hearing, determines that the grounds for the motion have been established, the court shall order that the plaintiff file the undertaking in an amount specified in the court's order as security for costs and damages of the defendant. The liability of the plaintiff pursuant to this section for the costs and damages of the defendant shall not exceed five hundred thousand dollars (\$500,000).*
- *(c) As used in this section, a construction project includes, but is not restricted to, the construction, surveying, design, specifications, alteration, repair, improvement, maintenance, removal, or demolition of any building, highway, road, parking facility, bridge, railroad, airport, pier or dock, excavation or other structure, development or other improvement to real or personal property.*

- See more at: <http://codes.findlaw.com/ca/code-of-civil-procedure/ccp-sect-529-1.html#sthash.CCbTvDKl.dpuf>

In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any stage of the proceeding either of the following:

- (1) that irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued.
- (2) the remedy at law is inadequate.

1635. The permittee shall cause an approved oak removal permit to be recorded in each county in which the property is located before beginning any operations contemplated under the permit.

1636. (a) A person who violates this chapter is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.

(b) The civil penalty imposed for each violation pursuant to this section is separate, and in addition to, any other civil penalty imposed for a separate violation pursuant to this section or any other provision of law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into consideration the nature, circumstance, extent, and gravity of the violation. In making this determination, the court may consider whether the effects of the violation may be reversed or mitigated, and with respect to the defendant, the ability to pay, any voluntary mitigation efforts undertaken, any prior history of violations, the

gravity of the behavior, the economic benefit, if any, resulting from the violation, and any other matters the court determines justice may require.

(d) Every civil action brought under this section shall be brought by the Attorney General upon complaint by the Department, or by the district attorney or city attorney in the name of the people of the State of California and any actions relating to the same violation may be joined or consolidated.

(e) All civil penalties collected pursuant to this section shall not be considered fines or forfeitures as defined in Section 13003 and shall be apportioned in the following manner:

(1) Fifty percent shall be distributed to the county treasurer of the county in which the action is prosecuted. Amounts paid to the county treasurer shall be deposited in the county fish and wildlife propagation fund established pursuant to Section 13100.

13100.

- *The amounts paid to and retained in the county treasury pursuant to Sections 12009 and 13003 shall be deposited in a county fish and wildlife propagation fund and expended for the protection, conservation, propagation, and preservation of fish and wildlife, under the direction of the board of supervisors, pursuant to this chapter. (b) All proposed expenditures from a county fish and wildlife propagation fund shall be reviewed first at a regular meeting of the county board of supervisors or its designated county fish and game commission to ensure compliance with Section 13103.*

(2) Fifty percent shall be distributed to the Wildlife Conservation Board for deposit in the Oak Woodlands Conservation Fund. These funds may be expended to cover the costs of any legal actions or for any other law enforcement purpose consistent with Section 9 of Article XVI of the California Constitution.

- *SEC. 9. Money collected under any state law relating to the protection or propagation of fish and game shall be used for activities relating thereto.*

SECTION 2. Section 21083.4 of the Public Resources Code is repealed.

- *21083.4. (a) For purposes of this section, "oak" means a native tree species in the genus *Quercus*, not designated as Group A or Group B commercial species pursuant to regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4526, and that is 5 inches or more in diameter at breast height. (b) As part of the determination made pursuant to Section 21080.1, a county shall determine whether a project within its jurisdiction may result in a conversion of oak woodlands that will have a significant effect on the environment. If a county determines that there may be a significant effect to oak woodlands, the county shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands: (1) Conserve oak woodlands, through the use of conservation easements. (2) (A) Plant an appropriate number of trees, including maintaining plantings and replacing dead or diseased trees. (B) The requirement to maintain trees pursuant to this paragraph terminates seven years after the trees are planted. (C) Mitigation pursuant to this paragraph shall not fulfill more than one-half of the mitigation requirement for the project. (D) The*

requirements imposed pursuant to this paragraph also may be used to restore former oak woodlands. (3) Contribute funds to the Oak Woodlands Conservation Fund, as established under subdivision (a) of Section 1363 of the Fish and Game Code, for the purpose of purchasing oak woodlands conservation easements, as specified under paragraph (1) of subdivision (d) of that section and the guidelines and criteria of the Wildlife Conservation Board. A project applicant that contributes funds under this paragraph shall not receive a grant from the Oak Woodlands Conservation Fund as part of the mitigation for the project. (4) Other mitigation measures developed by the county. (c) Notwithstanding subdivision (d) of Section 1363 of the Fish and Game Code, a county may use a grant awarded pursuant to the Oak Woodlands Conservation Act (Article 3.5 (commencing with Section 1360) of Chapter 4 of Division 2 of the Fish and Game Code) to prepare an oak conservation element for a general plan, an oak protection ordinance, or an oak woodlands management plan, or amendments thereto, that meets the requirements of this section. (d) The following are exempt from this section: (1) Projects undertaken pursuant to an approved Natural Community Conservation Plan or approved subarea plan within an approved Natural Community Conservation Plan that includes oaks as a covered species or that conserves oak habitat through natural community conservation preserve designation and implementation and mitigation measures that are consistent with this section. (2) Affordable housing projects for lower income households, as defined pursuant to Section 50079.5 of the Health and Safety Code, that are located within an urbanized area, or within a sphere of influence as defined pursuant to Section 56076 of the Government Code. (3) Conversion of oak woodlands on agricultural land that includes land that is used to produce or process plant and animal products for commercial purposes. (4) Projects undertaken pursuant to Section 21080.5 of the Public Resources Code. (e) (1) A lead agency that adopts, and a project that incorporates, one or more of the measures specified in this section to mitigate the significant effects to oaks and oak woodlands shall be deemed to be in compliance with this division only as it applies to effects on oaks and oak woodlands. (2) The Legislature does not intend this section to modify requirements of this division, other than with regard to effects on oaks and oak woodlands. (f) This section does not preclude the application of Section 21081 to a project. (g) This section, and the regulations adopted pursuant to this section, shall not be construed as a limitation on the power of a public agency to comply with this division or any other provision of law.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIB of the California Constitution.

- *Sec. 6. State subvention of funds. (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:*
 - *Legislative mandates requested by the local agency affected;*
 - *Legislation defining a new crime or changing an existing definition of a crime; or*
 - *Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.*
 - *Legislative mandates contained in statutes within the scope of paragraph (7) of subdivision (b) of Section 3 of Article I.*
- *(b) (1) Except as provided in paragraph (2), for the 2005–06 fiscal year and every subsequent fiscal year, for a mandate for which the costs of a local government claimant have been determined in a preceding fiscal year to be payable by the State pursuant to, the Legislature shall either appropriate, in the annual Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable in a manner prescribed by .*
- *(2) Payable claims for costs incurred prior to the 2004–05 fiscal year that have not been paid prior to the 2005–06 fiscal year may be paid over a term of years, as prescribed by .*
- *(3) Ad valorem property tax revenues shall not be used to reimburse a local government for the costs of a new program or higher level of service.*
- *This subdivision applies to a mandate only as it affects a city, county, city and county, or special district.*
- *This subdivision shall not apply to a requirement to provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee or retiree, or of any local government employee organization, that arises from, affects, or directly relates to future, current, or past local government employment and that constitutes a mandate subject to this section.*
- *(c) A mandated new program or higher level of service includes a transfer by the Legislature from the State to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the State previously had complete or partial financial responsibility.*

PROTECTING RENEWABLE RESOURCES—AN INVESTMENT WITH ENDURING RETURNS



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California's oak woodlands and oak forested lands form an ecological backbone that sustains the economy and environment. These lands are a public trust resource—they provide habitat for diverse plants and wildlife, sequester carbon, and sustain healthy watersheds. Cumulative threats to oak landscapes—including conversions for real estate and agricultural development, overgrazing, fire, disease, drought, and climate change—are fragmenting and degrading California's primary old growth oak resource.

The protection and stewardship of natural resources—especially protection of critical habitat of sufficient scale—builds resilience to cumulative impacts, thereby yielding enduring ecosystem and economic benefits. Public support for investments in the environment, emerging approaches for assigning economic value to

California's natural capital and ecosystem services provided by the environment, and laws that protect natural resources are tools available to those who seek to conserve the oak ecosystems that cover approximately ten percent of the state.

Valuing the Natural Environment at the Voting Booth: California voters have consistently passed bond measures that collectively have provided billions of dollars for environmental conservation and restoration. Voters have funded public open space acquisitions, restoration projects, conservation easements, and watershed protection. For example, Measure AA, passed by voters in 1988, provided 20-years of funding for the East Bay Regional Park District's acquisition and protection of 34,000 acres in Alameda and Contra Costa counties—including vital oak ecosystems—and leveraged over \$88 million in matching funds. Measure WW, which continued this funding in 2008, received overwhelming voter support for \$500 million in additional ecosystem expenditures, resulting in 120,536 acres protected to date and more than 1,000 miles of trails in the District.

Valuing Nature: The concepts of *natural capital* and *ecosystem services* were developed as a means to designate monetary worth to the natural systems and resources that sustain our economy. The Open Space Authority of Santa Clara Valley and Earth Economics published *Healthy Lands and Healthy Economies: Nature's Value in Santa Clara County* in 2014 to use available data to calculate the economic contributions of natural infrastructure to the county's economy. Approximately 27.7 percent of the county is protected, providing recreational opportunities for residents and visitors, agricultural products, habitat—including critical habitat for rare, threatened, and endangered species; habitat for pollinators; wildlife corridors; carbon sequestration; groundwater recharge; flood protection; water and air quality enhancements; sediment control; and nutrient cycling.¹ The report calculated the county's forests and woodlands, wetlands, agricultural landscapes, and aquifers as natural capital worth at least \$45 to \$107 billion. Further, unlike built infrastructure that depreciates, intact regenerative resources continue to provide ecosystem services over time.

The Coyote Valley Open Space Preserve, composed of oak woodlands and grasslands, was acquired by the Authority in 2010. The valuation report analyzes the Return on Investment (ROI) of the 352-acre preserve, which was identified as *one of top ten priority natural landscapes remaining in Santa Clara County...critically important to protect from development*. The ROI calculated the non-market recreational benefits preserve visitors enjoy, the economic value of the preserve's ecosystem services, and revenue earned from grazing on the preserve's land against purchase, capital improvements, and annual stewardship costs, arriving at a 3-to-1 ratio

¹ Batker, D., Schwartz, A., Schmidt, R., Mackenzie, A. Smith, J., Robins, J.



of benefits over costs after 10 years and a 6-to-1 ratio after 20 years.² ROI calculations in other counties have found similar benefit ratios.

The majority of California's oak woodlands are under private ownership, yet many of their ecosystem services extend beyond property lines. An economic justification for keeping ecosystems intact is that watersheds on these landscapes sustain greater than two-thirds of California's drinking water supply.³ New York City's water system provides an example of a clearly delineated relationship between upstream and downstream interests through which ecosystem stewardship results in considerable cost savings. New York's investment of approximately \$1.5 billion in protections for the watersheds that supply the city resulted in savings of \$6-\$8 billion in capital costs for water treatment and an estimated \$200-\$300 million in annual operating costs.⁴

Local, State, and Federal Protections: Ecological value is also upheld by laws, which provide protections or measures to mitigate damages to environmental resources. Senate Bill (SB) 1334, passed in 2004, brought the conversion of oak woodlands, with a few exceptions, under the purview of the California Environmental Quality Act (CEQA).⁵ Mitigation measures specified in SB 1334 include conservation of oak woodlands through the use of easements, planting and maintenance of oak trees for a seven-year period, contributions to the state's Oak Woodlands Conservation Fund, and other mitigation approaches developed by counties. CEQA slows, but often does not halt the destruction of oak woodlands. Further, CEQA's reliance on local governments results in uneven enforcement. Nonetheless, SB 1334 brings regulatory oversight that confers monetary value on oak woodlands. For example, the Council of Tree and Landscape Appraisers' value for a mature, healthy coast live oak tree in an oak woodland can be as high as \$100,000. Further, CEQA requires the analysis and mitigation of greenhouse gas emissions associated with a proposed oak woodland conversion, thereby valuing the considerable ecosystem services associated with carbon sequestration in the woodlands.^{6,7}

The Oak Woodlands Conservation Act of 2001, Assembly Bill 242, established the Oak Woodlands Conservation Fund to advance the protection and promotion of biologically functional oak woodlands. The legislation defined oak woodlands as oak stands (for any species in the genus *Quercus*) with greater than 10 percent canopy cover, or a stand that may have historically supported greater than 10 percent canopy cover. Cities or counties are required to prepare, or demonstrate that they have prepared, an oak woodlands management plan in order to qualify for a grant from the fund and to certify that the proposal is consistent with the management plan. Further, proposals for projects in the jurisdiction of more than one county or city must certify that the proposal is consistent with the respective oak woodlands management plans of each county or city.

Two types of oaks are commercial species in some situations, and are thus subject to protections afforded by the Forest Practice Act and the Forest Practice Rules.⁸ Further, governmental protections for water and for species that are listed as threatened, endangered, or of special concern confer protections on associated oak woodlands or oak forested lands in some circumstances.

² See: <http://www.openspaceauthority.org/trails/coyotevalley.html>.

³ O'Geen, A., Dahlgren, R., Swarowsky, A., Tate, K., Lewis, D., Singer, M. Research connects soil hydrology and stream water chemistry in California oak woodlands, *California Agriculture*, Volume 62, Number 2, April-June 2010.

⁴ Postel, S.L. and Thompson, Jr., B.H., Watershed protection: Capturing the value of nature's water supply services, *Natural Resources Forum* 29 (2005) 98–108. Also see UC Davis Information Center for the Environment (<http://ice.ucdavis.edu/node/133>).

⁵ Projects not subject to CEQA under SB 1334 are those on agricultural lands; affordable housing development for low income households located within an urbanized area, or within a sphere of influence as defined pursuant to Section 56076 of the Government Code; and projects undertaken pursuant to an approved Natural Community Conservation Plan (NCCP) or approved subarea plan within an approved NCCP that includes oaks as a covered species or that conserves oak habitat through natural community conservation preserve designation and implementation and mitigation measures that are consistent with SB 1334.

⁶ Dagit, R., Carlberg, C., Cuba, C., Scott, T. *Economic Incentives for Oak Woodland Preservation and Conservation*. Presented at the Seventh California Oak Symposium: Managing Oak Woodlands in a Dynamic World, US Forest Service, Pacific Southwest Research Station, held in Visalia, CA November 2014.

⁷ Gaman, T. *An Inventory of Carbon and California Oaks*. California Oak Foundation, 2008.

⁸ Oregon White Oak (*Quercus garryana*) and California Black Oak (*Quercus kelloggii*) are classified as group B commercial species on lands where group A commercial species grow naturally or have grown naturally in the Coast Forest and Northern Forest districts, and California Black Oak is classified as a group B species on lands where group A commercial species grow naturally or have grown naturally in the Southern Forest District. See the *California Forest Practice Rules* for more information.

OAKS—CALIFORNIA’S PRIMARY OLD GROWTH RESOURCE



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Oak woodlands and oak-forested lands cover approximately one tenth of California’s landmass. However, the state’s oak woodlands are disappearing at a rapid rate. Many oak woodlands are at the interface of urban, agricultural, and wild lands—facing pressures that include sprawl, over-grazing, agricultural business expansion, systemic drought, disease, and wildfire. **An estimated 82% of oak woodlands are privately held with little or no protection.**¹ California has lost more than a million acres of oak-related lands over the past seven decades, with 20% of the state’s oak woodlands facing development threats by 2040.² The rate of conversion is up steeply from the mid-1980s to mid-1990s when losses were estimated at 60,000 acres for the entire decade.³

We must take action to protect the hundreds of thousands of acres of California oak woodlands estimated to be at risk of development. Please join the California Oaks Coalition to work on the local, regional, and statewide level to preserve and protect this critical natural resource.

OAK ECOSYSTEM VALUES

Healthy Watersheds: Oak woodlands protect the quality of greater than two-thirds of California’s drinking water supply.⁴ Water purification and replenishment—essential to the environmental and economic health of our fast-growing state—is tied directly to watershed health. The importance of

¹Sulak, A., Huntsinger, L., Barry, S., Forero, L., Public land grazing for private land conservation? Presented at the *Sixth California Oaks Symposium: Today’s Challenges, Tomorrow’s Opportunities*, US Forest Service, Pacific Southwest Research Station, held in Rohnert Park, CA, October 2006.

²Gaman, T. and Firman, J., *Oaks 2040—The Status and Future of Oaks in California*. California Oak Foundation, 2006.

³Meadows, R., Oaks—Research and outreach to prevent oak woodland loss. *California Agriculture*, Volume 61, Number 1 January-March 2007.

⁴O’Geen, A.T., Dahlgren, R.A., Swarowsky, A., Tate, K.W., Lewis, D.J., Singer, M.J., Research connects soil hydrology and stream water chemistry in California oak woodlands, *California Agriculture*, Volume 62, Number 2, April-June 2010.



maintaining healthy watersheds is further underscored by the state's heavy reliance on groundwater for drinking water and other uses. California's groundwater resources are being depleted at an unsustainable rate. Additionally, approximately 20% of the state's groundwater supply tested by the US Geological Survey was found to have high concentrations of one or more contaminants.⁵

Climate Stability: An estimated 675 million metric tons of carbon dioxide is stored in oak trees as well as the understory in oak woodlands. Net present value of greenhouse gas emissions forms the foundation of the state's carbon dioxide (CO₂) reduction objectives (AB 32), as well as the California Forest Protocol preservation standards. Thus, a ton of carbon currently sequestered by oak woodlands is more critical than a ton of oak woodland carbon stored in the future. Additionally, every ton of CO₂ released into the atmosphere by oak woodland conversion—alongside the loss of the woodland's role in carbon sequestration—represents a measurable potential adverse environmental effect.

Oak trees are also drought-tolerant, with deep roots that access groundwater resources, hyphae that extend into the granite matrix, and symbiotic mycorrhizae that access nutrients and soil moisture.⁶ These resilient characteristics will gain importance as the changing climate introduces greater variability in weather patterns.

Sustainable Habitat: Oak woodlands provide food and critical habitat for California's native species, including 2,000 plants, 5,000 insects, 80 amphibians and reptiles, 160 birds, and 80 mammals—many of which are listed as threatened, endangered, or species of special concern by the state or the federal government.⁷ Any further degradation of oak woodland habitat will imperil additional species.

OAKS AND PROPERTY VALUES

Rangelands: Oak woodlands have a productive understory of grasses that support approximately 60% of California's rangelands. Further, acorns are a highly nutritious food source for livestock.

Well-managed rangelands also provide the environmental benefits described above. Grazing practices vary widely, with some ranches managed sustainably and others over-grazed, thus preventing the regeneration of oaks. For many years oaks were removed from ranchlands until it became clear that forage quality is enhanced by the presence of oaks and degrades in the years that follow the removal of oaks.⁸ The conversion of rangelands to high value crops—especially wine grapes—and to poorly-planned development are key drivers in the destruction of oak woodlands.

Conservation easements on oak woodlands can add economic value to working landscapes, providing an important incentive to protect natural resource values. Voluntary conservation easements provide tax benefits for landowners if legally defined conservation values are protected in the easement, and if a land trust with a conservation mission or a government agency holds and monitors the easement in perpetuity.⁹

Homes and Neighborhoods: Oaks add economic and aesthetic value to private property. Numerous studies have shown that urban land values are increased near open space and greenbelts. Research in Southern California found an increase in home value of almost 12% for homes immediately adjacent to native oak stands. The researchers also found that open space increases the overall value of the entire proximate community, in addition to providing important conservation features to the area.¹⁰

⁵Belitz, K., Fram, M.S., and Johnson, T.D., Metrics for Assessing the Quality of Groundwater Used for Public Supply, CA, USA: Equivalent - Population and Area, *Environmental Science and Technology*, 2015, 49, 8330-8338.

⁶Allen, M.F., *How Oaks Respond to Water Limitation*, Presented at the Seventh California Oak Symposium: Managing Oak Woodlands in a Dynamic World, US Forest Service, Pacific Southwest Research Station, held in Visalia, CA November 2014.

⁷Meadows, R., *ibid*.

⁸Pavlik, B.M., Muick, P., Johnson, S., and Popper, M., *Oaks of California*, Chacuma Press and California Oak Foundation, 1991, rev. 2006. Page 113,

⁹Sulak, A., Huntsinger, L., Standiford, R., Merenlender, A., and Fairfax, S.A., Strategy for Oak Woodland Conservation: The conservation easement in California, *Advances in GeoEcology*, 2004.

¹⁰Standiford, R. and Scott, T., Value of oak woodlands and open space on private property values in Southern California. Presented at the *Fifth Symposium on Oak Woodlands: Oaks in California's Challenging Landscape*. US Forest Service, Pacific Southwest Research Station, held in Diego, CA: US Forest Service, Pacific Southwest Research Station, 2001.